

E-filed on 5/19/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

REHAN SHEIKH,

Plaintiff,

v.

CISCO SYSTEMS, INC., and DOES 1 through
20, inclusive,

Defendants.

No. C-07-00262 RMW

ORDER DENYING PLAINTIFF'S RECUSAL
REQUEST; ORDER GRANTING
PLAINTIFF'S REQUEST FOR ADDITIONAL
TIME TO FILE A REPLY

[Docket Nos. 56, 57]

On May 19, 2008, the court issued an order regarding plaintiff's request for accommodations regarding his asserted disabilities. Later the same day, the court received two motions, filed by plaintiff on May 16, 2008: (1) a motion for recusal and (2) a motion requesting more time to file a reply in plaintiff's motion to remand. The court addresses these motions below.

A. Request for Recusal

The first motion asks the undersigned to recuse or withdraw himself from this case because the court has not "timely addressed" his requests for accommodation, and because the court has not taken action to prevent defendants from opposing plaintiff's purported "constitutional rights for an attorney." *See* Docket No. 56.

The court denies plaintiff's request that this court either recuse or withdraw. Recusal is appropriate only where a "reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *Yagman v. Republic Ins.*, 987 F.2d 622, 626 (9th Cir. 1993) (citation omitted). Plaintiff sets forth no such facts.

First, the court has ruled on plaintiff's requests for accommodation. As noted above, the court issued an order on plaintiff's requests for accommodations on May 19, 2008. That order set forth the time and procedure for plaintiff to attend the May 23, 2008 hearing on his motion to remand to state court, granted his request to continue Cisco's motion to compel arbitration, granted his request to consider evidence submitted in support of prior motions, and denied his request for counsel and special assistance from the court in scheduling and formulating motions. To the extent that plaintiff disagrees with the court's rulings, plaintiff should note that adverse rulings are not an adequate basis for recusal. *Leslie v. Grupo ICA*, 198 F.3d 1152, 1160 (9th Cir. 1999).

Second, plaintiff does not have a constitutional right to an attorney in a civil action such as this one and the court is under no obligation to appoint counsel. There is no constitutional right to counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. *See Lassiter v. Dep't of Social Services*, 452 U.S. 18, 25 (1981); *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (no constitutional right to counsel in § 1983 action), *withdrawn in part on other grounds on reh'g en banc*, 154 F.3d 952 (9th Cir. 1998) (en banc). Plaintiff's civil action does not involve incarceration or other form of restraint of his physical liberty. While the court may request counsel to represent an indigent litigant under 28 U.S.C. § 1915, the decision to do so is within "the sound discretion of the trial court and is granted only in exceptional circumstances." *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). This case does not present the requisite "exceptional circumstances."

B. Request for Extra Time to File a Reply Brief for Plaintiff's Motion to Remand

As noted above, the court's May 19, 2008 order regarding plaintiff's request for accommodation continued the due date for plaintiff's opposition to Cisco's motion to compel arbitration until 30 days after the court's ruling on plaintiff's motion to remand this action to the state court. Plaintiff's motion to remand is currently set for hearing this coming Friday, May 23, 2008,

1 and reply papers would have been due on May 9, 2008. Plaintiff has not yet filed a reply. Although
 2 plaintiff's request for accommodation did not originally ask for additional time to file a reply for his
 3 motion to remand, plaintiff now seeks an additional 20 days to file a reply in his "Motion for Extra
 4 Time For Plaintiff's Reply Brief on Second Motion to Remand to State Court." *See* Docket No. 57.


5 Plaintiff claims to have cognitive impairment and memory problems. As a result, he needs
 6 more time than usual to read and to compose his papers. He asked the court to appoint counsel
 7 because of these impairments, but, as discussed above, the court denied the request. However, the
 8 court finds good cause to allow plaintiff additional time to submit reply briefing for his motion to
 9 remand. Accordingly, plaintiff will have until June 13, 2008 to file a reply to his motion to remand.
 10 Due to the court's availability, the hearing on plaintiff's motion to remand will be continued until
 11 July 18, 2008. As previously set forth in the court's May 19, 2008 Order Continuing Hearing on
 12 Cisco's Motion to Compel Arbitration, the briefing schedule and hearing for defendant's motion to
 13 compel arbitration will be continued to give plaintiff thirty 30 days after the court's ruling on
 14 plaintiff's motion to remand to respond. The schedule will be set in the court's order on plaintiff's
 15 motion to remand.

16 ORDER

17 For the forgoing reasons:

- 18 • The court denies plaintiff's request that the undersigned recuse himself from his case.
- 19 • The court grants plaintiff's request for more time to file a reply brief regarding his
 20 motion to remand to state court as follows:
 - 21 • Plaintiff's reply will now be due **June 13, 2008**.
 - 22 • The hearing on plaintiff's motion to remand will be continued **to July 18,**
 23 **2008 at 9:00 a.m.** Plaintiff may appear telephonically by submitting a motion
 24 to appear telephonically telling the court at what number he can be reached.

25
 26 DATED: 5/19/08


 27 RONALD M. WHYTE
 28 United States District Judge

1 A copy of this order was mailed on 5/19/08 to:

2 **Plaintiff:**

Rehan Sheikh
PO Box 869
French Camp, CA 95231-0869
3 *PRO SE*

5 Notice of this document has been electronically sent to:

6 **Plaintiff**

Rehan Ayyub Sheikh rehansheikh@yahoo.com

8 **Counsel for Defendants:**

Marlene S. Muraco mmuraco@littler.com
Erica H. Kelley ehermatz@littler.com

12 Counsel are responsible for distributing copies of this order to co-counsel, as necessary.